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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14
15 v.
16 FABIAN GARCIA-PALACIO,
Defendant.

CASE NO. 1:20-MJ-00074 SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

DATE: August 5, 2020
TIME: 2:00 p.m.
COURT: Hon. Sheila K. Oberto

17 This case is set for a preliminary hearing on August 5, 2020. This Court has issued a series of
18 General Orders to address public health concerns related to COVID-19 and to suspend jury trials in the
19 Eastern District of California.

20 Although the General Orders address the district-wide health concern, the Supreme Court has
21 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
22 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
23 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
24 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
25 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
26 judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally
27 or in writing").

28 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory

1 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 2 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 3 the ends of justice served by taking such action outweigh the best interest of the public and the
 4 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 5 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 6 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 7 the defendant in a speedy trial.” *Id.*

8 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 9 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 10 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 11 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 12 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 13 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 14 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 15 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 16 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

17 In light of the societal context created by the foregoing, this Court should consider the following
 18 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 19 justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date
 20 for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 21 pretrial continuance must be “specifically limited in time”).

22 STIPULATION

23 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
 24 through defendant’s counsel of record, hereby stipulate as follows:

- 25 1. By previous order, this matter was set for preliminary hearing on August 5, 2020.
- 26 2. By this stipulation, defendant now moves to continue the preliminary hearing until
 27 **October 15, 2020, at 2:00 p.m.** and to exclude speedy trial and indictment time between August 5,
 28 2020, and October 15, 2020, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that initial discovery associated with this case includes investigative reports, social media account records, interview recordings, photographs and other media evidence. All this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) Counsel for defendant desires additional time to review the discovery, consult with this client, conduct further investigation, and discuss a possible resolution of the case with the government.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) In addition to the public health concerns cited by General Order 617 and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because counsel and other relevant individuals have been encouraged to telework and minimize personal contact to the greatest extent possible. It will be difficult to avoid personal contact should the preliminary hearing proceed.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in an indictment or trial within the original dates prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which an indictment must be filed and within which a trial must commence, the time period of August 5, 2020 to October 15, 2020, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy indictment/trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the

Speedy Trial Act dictate that additional time periods are excludable from the period within which an indictment must be filed and a trial must commence.

IT IS SO STIPULATED.

Dated: July 23, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ JUSTIN J. GILIO
JUSTIN J. GILIO
Assistant United States Attorney

Dated: July 23, 2020

/s/ BENJAMIN GERSON
BENJAMIN GERSON
Counsel for Defendant
Fabian Garcia-Palacio

FINDINGS AND ORDER

IT IS SO ORDERED.

Dated: July 24, 2020

/s/ Sheila H. Oberto
UNITED STATES MAGISTRATE JUDGE